IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.332 OF 2005

Gous Fariddin Naikwadi & Ors. ...Appellants
Vs.
Khermirasaheb Ghuduso Kazi & Ors. ...Respondents

Shri P.D. Pise i/by Ms A.R.S. Baxi for the Appellants.
None for the Respondents.

CORAM : A. S. OKA, J.
DATE : JULY 25, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellants. The Appellants are the original Defendants. Decree for possession has been passed against the Appellants on the ground that the Appellants have committed encroachment on the property of the original Plaintiff. The decree passed by the Trial Court has been confirmed in Appeal by the District Court.

2. The learned Advocate appearing for the Appellants submitted that the surveyor who was appointed as the Court Commissioner has not followed the requisite procedure. He submitted that the map prepared by the Court Commissioner shows that there was a wall in existence in north-south direction and therefore, the courts below could not have come to the

conclusion that the Appellants have made encroachment.

3. I have considered the submissions. So far as the first point is concerned, I find that the same is not raised before the Appellate Court. The first Appellate Court is the final court of facts. Such factual contention cannot be raised for the first time in the Second Appeal. So far as second contention is concerned, the courts below have dealt with the said contention. The courts below have held that merely because a wall is shown to be in existence, one cannot jump to the conclusion that the Appellants have not made encroachment. The Appellate Court has noted in paragraph No.15 of the judgment that the documents of the title on which the Appellants placed the reliance were not helpful to the Appellants as the boundaries of the property described in the said documents were not in confirmity with the case made out by the Appellants. Infact, the Appellate Court has recorded a concession on the part of the Appellants that the description of the property in the documents of title of the Appellants was not correct.

4. There are concurrent findings of the fact

recorded by the courts below that the original Plaintiff has established his title and that the Appellants have committed encroachment. No substantial question of law arises. Second Appeal is dismissed. No orders as to costs.

JUDGE